

## REMARKS

With the foregoing amendments, claims 1-6 and 8-16 have been canceled without prejudice. Accordingly claims 21, 22, and 24-32 are pending and at issue, with claims 21, 29, 30, and 31 being independent. In view of the foregoing amendments and the following remarks, reconsideration of the application is respectfully requested.

### The Rejection under 35 U.S.C. § 112

Claims 1-6, 8-16, 21, 22, and 24-32 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter regarded as the invention. While claims 1-6 and 8-16 have been canceled, the remaining claims contain similar language and accordingly, the applicants will address the rejection herein.

The applicants respectfully traverse the rejection that the claims are indefinite. In particular, the examiner alleges that “it is not clear how one is able to determine whether the reflectivity and auto ignition points of the heat shield and foam core...are higher or lower with regards to one another if one only knows that the core is foam, and has no idea as to the material of either the cover of the heat shield.” (Office action of November 3, 2006, page 2). Further, the examiner states that it would be “virtually impossible to determine whether one is actually higher or lower than the other without making an assumption or educated guess.” (Id.).

It is well established, however, that the use of relative terms does not automatically render a claim invalid. See *Allergan Sales, Inc., v. Pharmacia & Upjohn, Inc.*, 42 U.S. P.Q.2d 1560 (S.D.Calif. 1997) citing *Seattle Box Co. v. industrial Crating & Packing*, 731 F.2d 818, 826 (Fed Cir. 1984). In particular, “when a word of degree is used the district court must determine whether the specification provides some standard for measuring that

degree.” (Id.). Thus, the issue for determining definiteness is whether the question “relative to what” can be answered. (Id.; emphasis added).

In the present claims, the question of “relative to what” most certainly can and is answered. For instance, in claim 21, the foam pad is clearly defined as more fire-preventive than the foam core. The fire-preventive characteristics are defined relative to one another. One of ordinary skill in the art would most certainly be able to determine whether the materials chosen to construct a similar device would infringe the claims by simply measuring the fire-preventive properties of the chosen materials and comparing them. It would be irrelevant whether one of ordinary skill in the art choose an aluminum material for the heat shield and a fabric cover (as assumed by the examiner), or whether the person of ordinary skill in the art choose any other suitable material. The test would still simply be whether these chosen materials had the noted physical properties when analyzed relative to one another.

Accordingly, for at least the foregoing reasons, it is respectfully submitted that pending claims 21, 22, and 24-32 are sufficiently definite and the rejection under 35 U.S.C. §112 must be withdrawn. Moreover, the applicants respectfully note that the claims should not be limited to the materials suggested by the examiner.

### **The Rejections under 35 U.S.C. § 103**

Claims 1-6, 8-16, 21, 22, and 24-32 were rejected as being unpatentable over Fairborn in view the previously identified material reflectivity chart. Claims 1-6 and 8-16 have been canceled without prejudice and claims 21, 22, and 24-32 remain pending and at issue. It is respectfully submitted that all claims are allowable over these patents for the reasons set forth below.

Independent claims 21, 29, 30, and 31 are each generally directed to a dock pad having a foam core, a foam pad that is more fire-preventative than the foam core and a cover

overlaying the foam core and foam pad. Additionally, claims 21, 29, and 30 each recite a heat shield interposed between the cover and the foam core. Neither Fairborn nor the reflectivity chart, either alone or in combination, discloses or suggests a dock pad having a foam core, a foam pad that is more fire-preventative than the foam core, and a cover that overlays the foam core and foam pad.

In contrast, Fairborn is directed to the alleged sale of a 1000 series dock pad by Fairborn U.S.A. Without admitting that the Fairborn reference is prior art to the present application, the applicants note that Fairborn simply discloses a monolithic pad. Fairborn does not disclose or suggest a foam core and a foam pad, nor does the examiner allege that Fairborn discloses such a structure.

Additionally, the reflectivity chart is directed to the physical characteristics of various materials, and does not disclose or suggest any foam pad and foam core structure, let alone a foam pad that is more fire-preventative than the foam core.

Therefore, due to the deficiencies in both Fairborn and the reflectivity chart, it follows that no combination of Fairborn and the reflectivity can render obvious claims 21, 22, and 24-32. In particular, because neither Fairborn nor the reflectivity chart discloses a foam core, a foam pad that is more fire-preventative than the foam core, and cover overlaying the foam core and the foam pad, no combination of Fairborn and the reflectivity chart can result in a dock pad in which a plurality of foam structures are overlaid by a cover such that the foam pad is more fire-preventative than the foam core. Accordingly, it is respectfully submitted that claims 21, 22, 24-32, and all claims dependent thereon are in condition for allowance.

**Conclusion**

Reconsideration of the application and allowance thereof are respectfully requested.

If there is any matter that the examiner would like to discuss, the examiner is invited to contact the undersigned representative at the telephone number set forth below.

The Commissioner is hereby authorized to charge any deficiency in the amount enclosed or any additional fees which may be required during the pendency of this application to Deposit Account No. 50-2455.

Respectfully submitted,  
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